

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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)	
CBS RADIO INC. OF PHILADELPHIA)	File No. EB-05-IH-0150
)	FRN: 0003741998
Licensee of Station WIP(AM),)	NAL/Acct. No. 200732080008
Philadelphia, Pennsylvania)	Facility ID No. 28626

MEMORANDUM OPINION AND ORDER

Adopted: August 26, 2009

Released: August 26, 2009

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny a Petition for Reconsideration (“Petition”) filed by CBS Radio Inc. of Philadelphia (“CBS”),¹ licensee of Station WIP(AM), Philadelphia, Pennsylvania, (the “Station”), of a *Forfeiture Order* for \$4,000. In the *Forfeiture Order*, we found that CBS violated Section 73.1216 of the Commission’s rules² by failing to announce the material terms of a contest and neglecting to conduct the contest in accordance with its material terms.³ The *Forfeiture Order* was based on a complaint alleging that CBS improperly disqualified the complainant as a contest winner based on an unannounced term.⁴ As discussed below, we deny the Petition and thereby affirm the \$4,000 forfeiture.

II. BACKGROUND

2. On July 10, 2008, the Enforcement Bureau’s Investigations and Hearings Division (“Division”) issued a *Forfeiture Order* against CBS because its Station failed to announce the material terms of a contest and neglected to conduct the contest in accordance with its material terms, in apparent violation of the Commission’s contest rule, 47 C.F.R. § 73.1216.⁵ Specifically, the Division found that the Station violated the rule by disqualifying a contest winner and revoking the prize, the opportunity to compete in a popular eating competition called “Wing Bowl 13,” due to an unannounced term, his membership in a different competitive eating association than the one historically associated with the

¹ See CBS Radio Inc. of Philadelphia, Petition for Reconsideration (filed August 11, 2008) (“Petition”).

² See 47 C.F.R. § 73.1216.

³ See CBS Radio Inc. of Philadelphia, Forfeiture Order, 23 FCC Rcd 10569 (Enf. Bur., Investigations & Hearings Div., 2008) (“*Forfeiture Order*”).

⁴ See Letter from Mr. Arnie Chapman to the Federal Communications Commission, dated January 18, 2005 (“*Complaint*”).

⁵ See *Forfeiture Order*, 23 FCC Rcd at 10573. Section 73.1216 of the Commission's rules provides: “A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.” 47 C.F.R. § 73.1216.

prize.⁶ CBS seeks reconsideration of these findings and urges rescission of the *Forfeiture Order*.

III. DISCUSSION

3. Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters.⁷ A petition that simply repeats arguments previously considered and rejected will be denied.⁸ We find that CBS has failed to either demonstrate error or present new facts or changed circumstances, as required. In fact, CBS again raises arguments already considered and rejected in the *Notice of Apparent Liability* and the *Forfeiture Order*: (1) that the Station's own contest rules contain restrictions on participation that allowed CBS to properly disqualify the complainant from the contest and, therefore, there was no violation of the Commission's contest rule⁹; and (2) that the Commission's contest rule applies or should apply a standing requirement similar to that used by the Commission in indecency cases.¹⁰ To the extent that the Petition repeats arguments previously considered and rejected, we will summarily deny the petition.¹¹ CBS contends, however, that the *Forfeiture Order* misunderstood or failed to fully consider its argument with respect to standing.¹² Although we disagree with this contention, we do herein offer additional clarification.

4. CBS asserts that the contest rule is limited to protecting only those individuals residing in a station's listening area and that, therefore, it does not confer the complainant in this case with standing to file the instant complaint without his first demonstrating that he resides within the Station's market.¹³ CBS misinterprets the Commission's contest rule. The contest rule is designed to protect the general public from false, misleading, or deceptive licensee-conducted and advertised contests,¹⁴ and does not

⁶ See *id.* The contest required contestants to propose and perform a competitive eating stunt, and awarded winners a chance to compete in a popular eating competition called "Wing Bowl 13." CBS initially awarded the prize to the complainant, but later disqualified him when it discovered that he belonged to a competitive eating association, the Association of Independent Competitive Eaters ("AICE"). AICE is a rival of the Independent Federation of Competitive Eating ("IFOCE"), which is another competitive eating association historically associated with Wing Bowl 13.

⁷ See *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106 (c).

⁸ See *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216 (2004); *Bennett Gilbert Gaines*, 8 FCC Rcd 3986 (Rev. Bd. 1993).

⁹ See Petition at 1-2.

¹⁰ See *id.* at 2-4.

¹¹ See *CBS Radio Inc. of Philadelphia, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4223, 4226 (Enf. Bur., Investigations & Hearings Div. 2007) ("NAL") (rejecting argument that CBS's disqualification of the complainant from the contest was proper under the contest's rules because those rules require contestants to be Station "listeners"); *Forfeiture Order*, 23 FCC Rcd at 10572 (rejecting argument that standing requirement from Commission's indecency enforcement applies to contest cases).

¹² See Petition at 1 n.1.

¹³ See *id.* at 1-2.

¹⁴ See, e.g., *WMJX, Inc.*, Decision, 85 FCC 2d 251, 269 (1981) (holding that proof of actual deception is not necessary to find violations of contest rules, and that the licensee, as a public trustee, has an affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements); *Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, 60 FCC 2d 1072, 1073 (1976) (finding that public interest, convenience, and necessity requires adoption of contest rule to prevent abuses described in previous public notices).

preclude any member of the public from filing a complaint if they have information establishing that a contest rule violation has occurred. To limit licensee-conducted contest complaints, filed outside the license application proceeding,¹⁵ only to regular listeners and/or listeners residing in the station's market would have the unintended effect of providing a safe harbor for licensees engaged in contest rule violations. Consumer participation assists the Commission in ensuring that all licensees are in full compliance with applicable rules and properly discharging their statutory duty to operate in the public interest. The Commission, of course, must review the propriety and sufficiency of a complaint to ensure that there is a sufficient basis to warrant an investigation. Contrary to CBS's assertion, however, neither the Commission's contest rule nor its precedent in this area require that a complainant specifically aver in its complaint that he or she resides in the community of license where the station complained against is located.¹⁶

5. CBS argues that because Note 2 to Section 73.1216¹⁷ includes the term "audience," the rule must have been intended to protect only the station's listeners residing within its predicted coverage contour.¹⁸ We disagree with this reading. The rule and the accompanying Note 2 plainly do not limit the definition of "audience" only to those individuals residing in a coverage contour.¹⁹ The term simply states that "the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter."²⁰ As is made clear by this very language, Note 2 just describes the time and manner in which a licensee must disclose the material contest terms to its audience, and makes no comment about standing or the requirements for filing a complaint.

6. As the Commission described in its *Report and Order* adopting the rule and accompanying Notes, "Note 2 contains guidelines with respect to the time and manner of disclosure of material contest terms."²¹ In the Commission's *Notice of Proposed Rulemaking* regarding the contest rule, the Commission applied the proposed rule to "all contests (a) conducted by the licensee and (b)

¹⁵ See *infra* paragraph 7 (regarding Section 309(d)(1) proceedings, which require specific standing requirements).

¹⁶ Compare *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042-43 (1999) (awarding petition to deny standing to market residents and regular viewers and listeners of a station); *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Order, 21 FCC Rcd 13299, 13329 (2006) ("Omnibus Order") (subsequent history omitted) (announcing enforcement policy of proposing forfeitures only against licensees and stations whose broadcasts of actionable material were the subject of complaints by viewers of those stations).

¹⁷ See 47 C.F.R. § 73.1216 Note 2. That Note states:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.

¹⁸ See Petition at 2.

¹⁹ *Id.*

²⁰ See *supra* note 17.

²¹ *Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Report and Order, 60 FCC 2d 1072 (1976).

broadcast to the public,”²² using the terms “audience” interchangeably with “viewers,” “listeners,” and those engaged in contest “participation.”²³ Additionally, in subsequent precedent, the terms “public,” “participant,” and “potential participant” have been used when discussing the contest rule’s requirements and those whom it protects.²⁴ These phrasings make clear that the contest rule was designed to protect both contestants (like the complainant in this case) and those who might potentially participate in licensee-conducted contests.²⁵ Neither the text of the rule, the rulemaking documents, nor precedent mentions or imposes the standing requirement described by CBS, and CBS cites nothing demonstrating otherwise in its Petition.

7. CBS further argues that the standing requirement applied to individuals and parties filing a petition to deny under Section 309(d)(1) in the license application context should apply here as well. The Commission has established standards by which consumers may qualify as parties in interest under Section 309(d)(1). As a general matter, in a license application proceeding, a party seeking to file a petition to deny may qualify as a party in interest if the petitioner alleges that he or she is a listener or viewer of the station in question or that he or she resides within the station’s service area.²⁶ The Commission, however, has not applied the same requirement when it receives alleged contest rule violation complaints filed outside the license renewal or application contexts. Although the Commission has limited prosecution of actionable indecency cases to those matters for which we have a complaint from a viewer of the station at issue, that policy reflects the Commission’s sensitivity to the First Amendment concerns raised by such cases. The Commission’s contest rule, by contrast, is content neutral and does not implicate the First Amendment.²⁷ Therefore, it is not appropriate to adopt such a limitation on our contest enforcement actions.

8. We find that enforcement action taken in this case was wholly appropriate and consistent with the rule and applicable precedent. Therefore, we affirm the *Forfeiture Order*’s finding that CBS violated the Commission’s contest rule and affirm the \$4,000 forfeiture imposed on CBS.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed August 11, 2008, by CBS Radio Inc. of Philadelphia **IS DENIED**, and that the Division’s *Forfeiture Order* **IS AFFIRMED**.

²² *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 53 FCC 2d 934, 936 (1975) (describing scope of proposed rule).

²³ *See id.* at 937-38.

²⁴ *See Randall T. Odeneal*, Letter, 7 FCC Rcd 4474 (Mass Media Bur. 1992) (discussing that “contests were presented to the public” and “potential participants” as the station’s contests); *Access I New Jersey Company, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4232, 4235 (Enf. Bur., Investigations & Hearings Div. 2007) (noting that “the rules, as established for contest participants, contained no restrictions on the use of multiple phone lines” and that “any announcements of the rules made by the Station, would fail to notify potential participants that use of multiple phone lines could result in disqualification”); *CBS Radio East, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1293 ¶¶ 6, 11 (Enf. Bur., Investigations & Hearings Div. 2009) (*citing WMJX, Inc.*, Decision, 85 FCC 2d 251, 269 (1981) (“A broadcast announcement concerning a contest is false, misleading, or deceptive if the net impression of the announcement has a tendency to mislead the public . . . the analysis under the rule is the announcement’s impact on the public . . . ”)).

²⁵ *See* authorities cited *supra* notes 21-24.

²⁶ *See* authorities cited *supra* note 16.

²⁷ *See Omnibus Order*, 21 FCC Rcd at 13329.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Memorandum Opinion and Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. CBS Radio Inc. of Philadelphia will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, and Anjali.Singh@fcc.gov.

11. **IT IS FURTHER ORDERED**, that copies of this *Order on Reconsideration* shall be sent by Certified Mail, Return Receipt Requested, to CBS Radio Inc. of Philadelphia, 2175 K Street, N.W., Suite 350, Washington, DC 20037, and to its counsel, Brian M. Madden, Dennis P. Corbett, and Philip A. Bonomo, Senter Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Suzanne M. Tetreault
Acting Chief, Enforcement Bureau

²⁸ See 47 U.S.C. § 504(a).